

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF THE INTERIOR
MINERAL MANAGEMENT SERVICE**

**Open and Nondiscriminatory Movement of)
Oil and Gas as Required by the Outer)
Continental Shelf Lands Act)** **RIN 1010-AD17**

**COMMENTS
OF
ENBRIDGE ENERGY PARTNERS, L.P. AND ENBRIDGE, INC.
SUPPORTING THE PROPOSED RULES**

Pursuant to the Notice of Proposed Rulemaking regarding Open and Nondiscriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act (“OCSLA”) issued by the Department of the Interior’s Minerals Management Service (“MMS”) in this proceeding on April 6, 2007,¹ Enbridge Energy Partners, L.P. (“Enbridge Partners”)² and Enbridge, Inc. (collectively referred to as “Enbridge”) hereby respectfully submit the following comments.

**I.
EXECUTIVE SUMMARY**

Enbridge supports MMS’ NOPR insofar as it (1) establishes a process for dealing with complaints on a case-by-case basis rather than implementing prescriptive regulation, and (2) is not directed at gas and oil pipelines regulated by the Federal Energy Regulatory Commission (“Commission” or “FERC”) under the Natural Gas Act (“NGA”) or the Interstate Commerce Act (“ICA”). Furthermore, Enbridge endorses and hereby incorporates by reference the comments

¹ *Open and Non-Discriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act*, 72 F.R. 17047 (April 6, 2007) (“NOPR”).

² Enbridge Partners is a publicly-traded master limited partnership headquartered in Houston, Texas. Enbridge, Inc. owns, both directly and indirectly through Enbridge Energy Management, LLC and Enbridge Energy Company, Inc., approximately 11.5% of Enbridge Partners. Enbridge Energy Company, Inc. is the general partner of Enbridge Partners.

filed in this proceeding by the Association of Oil Pipelines (“AOPL”), in which AOPL expresses broad support for the proposed regulations as they relate to oil pipelines because the NOPR strikes an appropriate balance between protecting the statutory rights of shippers and maintaining a less intrusive regulatory regime. Enbridge agrees the NOPR is appropriate in light of the limited nature of the relevant statute and the commercial context of transportation on the Outer Continental Shelf (“OCS”).

II. BACKGROUND

Enbridge, Inc., a Canadian corporation, is one of the foremost energy delivery companies in North America, with ownership interests in over 20,000 miles of crude oil, petroleum products, and natural gas pipelines in Canada and the United States, including the world’s longest crude oil and liquids pipeline system, Canada’s largest local distribution company, and several natural gas pipelines. In particular, through its wholly-owned subsidiary, Enbridge (U.S.) Inc., Enbridge owns Enbridge Offshore Inc., with joint venture interests in eleven transmission and gathering systems in five transportation corridors located in the Gulf of Mexico. These include six gas transmission pipelines regulated by the FERC³ and six gas gathering systems subject to MMS regulation.⁴

The operations of Enbridge’s offshore gathering facilities reflect the unique conditions present in the offshore production and gathering of natural gas. Enbridge’s offshore gathering systems typically span a geographic corridor, connecting one or more producing platforms to a

³ The FERC regulated natural gas pipelines in the GOM are Destin Pipeline Company, LLC (33% interest), Garden Banks Gas Pipeline, LLC (100% interest), Mississippi Canyon Gas Pipeline, LLC (100% interest), Nautilus Pipeline Company L.L.C. (74.33% interest), Enbridge Offshore Pipelines (UTOS) LLC (100% interest), and Stingray Pipeline Company, L.L.C. (50% interest).

⁴ The MMS-regulated gas gathering systems include Triton (Gunnison Gathering Lateral) (50% interest), Magnolia Gathering Lateral (100% interest), Manta Ray Pipeline (74.33% interest), Cleopatra Pipeline (22% interest), Okeanos Pipeline (33% interest), and Spirit Pipeline (100% interest).

long-line transmission line owned by an interstate pipeline affiliate, which terminates at or near onshore processing and treating facilities and/or interconnections with other unaffiliated interstate pipelines. Offshore gathering lines are typically larger in both diameter and length than onshore gathering facilities in order to carry the high volumes of natural gas received by the producers on Enbridge's facilities. Moreover, the gas gathered in these systems generally must be treated and processed in order to meet typical interstate pipeline gas quality specifications. Thus, Enbridge's offshore gathering systems require greater capital investment, are more technically complex, and involve riskier operations than its onshore gathering facilities. In addition, the design and operation of its offshore systems are driven by the production and development needs of producers, not end-use market demand. Enbridge's offshore gathering entities do not control interstate pipeline capacity or make sales of gas. Through its offshore gathering and regulated transmission facilities, Enbridge transports an average of three billion cubic feet of natural gas per day, which equates to almost half of the total deepwater natural gas production in the Gulf of Mexico. In addition, construction is currently underway on new natural gas and crude oil laterals to connect the deepwater Neptune oil and gas field to existing pipelines. Throughput is expected to commence in the last half of 2007. Enbridge also plans to begin construction of a new gas gathering lateral to connect the deepwater Shenzi field. This proposed lateral will deliver gas to Enbridge's 22% owned Cleopatra pipeline, its 50% owned Manta Ray pipeline, and its 74.33% owned Nautilus pipeline.

III. COMMUNICATION

The name and mailing address of the person to whom service is to be made and to whom all communications should be addressed in this proceeding is:

* Cynthia A. Corcoran
FERC Chief Compliance Officer and
Senior Counsel
Enbridge Energy Company, Inc.
1100 Louisiana, Suite 3300
Houston, Texas 77002-5217
Phone: (713) 821-2265
Fax: (713) 821-2229
email: cynthia.corcoran@enbridge.com

* Person designated to receive service pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure.

IV. COMMENTS

Enbridge appreciates the opportunity to comment in connection with MMS' NOPR regarding open and nondiscriminatory movement of oil and gas as required by the OCSLA. In its current form, the NOPR seeks to establish a process for dealing with complaints on a case-by-case basis rather than implementing prescriptive regulation, and furthermore chooses not to address gas and oil pipelines regulated by the FERC under the NGA and the ICA. Enbridge fully supports this limited approach to regulation, and would oppose a more onerous, prescriptive regime. Furthermore, Enbridge fully agrees with AOPL's analysis that the current NOPR strikes an appropriate balance between ensuring the statutory rights of shippers and maintaining a less intrusive regulatory regime conducive to robust offshore infrastructure development. This approach is consistent with the limited nature of the relevant statute and the commercial context of transportation on the OCS.

As recognized by AOPL in its comments, the NOPR states that the basis for the NOPR was the D.C. Circuit Court of Appeals decision in *Williams Cos. v. FERC*, in which the Court found that the FERC lacked the authority to impose extensive open access rules on pipelines

operating on the OCS.⁵ The Court found that enforcement of OCS pipelines' statutory obligation to provide "open and non-discriminatory access to both owner and nonowner shippers"⁶ rested upon conditions of the right-of-way or lessee holders, and as such, that the Secretary of the Interior has the authority to enforce such conditions.⁷ Also recognized in AOPL's comments, both MMS' and FERC's approach to OCS pipelines has traditionally been a less intrusive, lighter-handed form of regulatory oversight than that which has been typically applied to onshore jurisdictional pipelines. This regulatory approach has resulted in a progressive growth in liquids and gas pipelines that has permitted more complete development of mineral resources in the OCS. Thus, the fundamental purpose of the NOPR should be to protect statutory shipper rights under the OCSLA and to ensure that OCS pipelines are not burdened in a manner that would inhibit the vigorous growth necessary to meet growing offshore production needs. Moreover, the comments submitted in response to MMS' NOPR issued in 2004 did not evidence any broad pattern of problems with access and discrimination as to OCS pipelines.⁸

In light of this absence of reported problems, Enbridge fully supports MMS' proposed system of oversight, which relies upon a flexible complaint process with both informal and formal resolution paths, as the most prudent approach to regulation. Moreover, Enbridge urges the MMS to resist any suggestions to expand its proposal to cover pipelines already comprehensively regulated by the FERC under the ICA or the NGA. No regulatory gap exists respecting these systems, and imposition of additional MMS rules to these lines would add an

⁵ 345 F.3d 910 (D.C. Cir. 2003) (finding that the FERC had limited authority to enforce "ratable take" rights and to issue expansion orders).

⁶ OCSLA § 5(f), 43 U.S.C. § 1334(f).

⁷ *Williams* at 913-914.

⁸ "Advance Notice of Proposed Rulemaking and Announcement of Public Meetings," *Open and Non-Discriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act*, 69 F.R. 19137 (April 12, 2004) ("ANOPR").

unnecessary, potentially conflicting regulatory burden. Finally, Enbridge cautions the MMS against adopting a prescriptive approach to regulation of gathering systems in the OCS. As noted above, offshore operations are, by their nature, more technically complex, riskier, and more capital intensive than onshore operations. Adoption of a comprehensive, prescriptive regulatory regime would create unnecessary regulatory burdens and dampen investment in offshore infrastructure.

V. CONCLUSION

For all of these reasons, as discussed more fully above, Enbridge supports the NOPR and urges MMS to maintain its current proposal of (1) establishing a process for dealing with complaints rather than implementing prescriptive regulation, and (2) choosing not to address oil and gas pipelines regulated by the FERC under the NGA and ICA.

Respectfully submitted,

/s/ Cynthia A. Corcoran

Cynthia A. Corcoran
FERC Chief Compliance Officer and Senior
Counsel

Enbridge Energy Company, Inc.

1100 Louisiana, Suite 3300

Houston, Texas 77002-5217

Phone: (713) 821-2265

Fax: (713) 821-2229

email: cynthia.corcoran@enbridge.com

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